

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ADAM C. BEN-DAVID,)
)
 Petitioner,)
)
 v.) Docket No. 2313-13S.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

The petition in this case was filed with the Court on January 28, 2013, and included as an attachment a copy of a letter from the Internal Revenue Service (IRS) Office of Appeals (Appeals Office) dated October 31, 2012. The letter stated that the Appeals Office had concluded that the IRS Examination Division had correctly determined that petitioner was not entitled to certain deductions claimed on his tax return for 2009. The letter went on to state that if petitioner did not sign a consent to the assessment and collection of the tax deficiency related to the proposed adjustments, “a Statutory Notice of Deficiency will be issued to you as required by law” and petitioner could contest the notice of deficiency by filing a petition for redetermination with the Tax Court.

On March 27, 2013, respondent filed an answer to the petition and attached thereto a copy of a notice of deficiency for the taxable year 2009 purportedly mailed to petitioner several days earlier, on March 15, 2013. Although it should have been apparent to respondent’s counsel under the circumstances that the Court’s jurisdiction in the case was in doubt, the answer included a prayer requesting that the Court sustain the notice of deficiency. Remarkably, there is no mention in the answer that the petition may have been filed prematurely or that the Court lacked jurisdiction over the petition.

By Order dated December 16, 2013, the Court directed the parties to show cause why this case should not be dismissed for lack of jurisdiction. On December 30, 2013, petitioner filed a response to the Court’s Order asserting that he filed a timely challenge to a notice of determination issued by the Appeals

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Office on October 31, 2012. On January 7, 2014, respondent filed (1) a response to the Court's Order and (2) a Motion to Dismiss for Lack of Jurisdiction. Although the preamble in respondent's motion to dismiss states that respondent had not issued to petitioner a notice of deficiency or other notice of determination for the taxable year 2009, the body of the motion includes allegations that respondent did issue a notice of deficiency for 2009 to petitioner and that the petition was filed prematurely.

The Tax Court is a court of limited jurisdiction. The Court's jurisdiction to redetermine a deficiency depends upon the issuance of a valid notice of deficiency and a timely filed petition. Monge v. Commissioner, 93 T.C. 22, 27 (1989); Normac, Inc. & Normac International v. Commissioner, 90 T.C. 142, 147 (1988); Rule 13(a), (c), Tax Court Rules of Practice and Procedure. The notice of deficiency has been described as "the taxpayer's ticket to the Tax Court" because without it, there can be no prepayment judicial review by this Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983).

The record reflects that, at the time the petition was filed, respondent had not issued to petitioner a notice of deficiency or notice of determination for the taxable year 2009 that would permit him to invoke the Court's jurisdiction under I.R.C. section 6213(a) or any other statutory provision. The October 31, 2012, letter from the Appeals Office that petitioner refers to as a "notice of determination" is neither a notice of determination nor a notice of deficiency and is akin to a so-called 30-day letter. See, e.g., Abrams v. Commissioner, 84 T.C. 1308 (1985), aff'd, 787 F.2d 939 (4th Cir. 1986) (and cases cited thereat). Accordingly, we are obliged to dismiss this case for lack of jurisdiction on the narrow ground that petitioner did not have the requisite "ticket" to invoke the Court's jurisdiction when he filed his petition.¹

¹Although respondent asserts in his motion to dismiss for lack of jurisdiction that he issued a valid notice of deficiency to petitioner for the taxable year 2009 on March 15, 2013, there is no evidence in the record to show that the notice was properly mailed to petitioner's last known address. In any event, the validity of the notice of deficiency is not before the Court in this case, and we therefore do not address that matter.

Upon due consideration and for cause, it is

ORDERED that the Court's Order dated December 16, 2013, directing the parties to show cause why this case should not be dismissed for lack of jurisdiction, is made absolute. It is further

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed January 7, 2014, is granted in that this case is dismissed for lack of jurisdiction on the ground that, at the time the petition was filed, respondent had not issued to petitioner a valid notice of deficiency or notice of determination for the taxable year 2009 that would permit him to invoke the Court's jurisdiction.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **JUN 24 2014**